

1 Richard J. Reynolds, Esq.
2 Nevada Bar No. 11864
3 TURNER, REYNOLDS, GRECO & O'HARA
4 16485 Laguna Canyon Road, Suite 250
5 Irvine, California 92618
6 Telephone: (949) 474-6900
7 Facsimile: (949) 474-6907
8 E-mail: rreynolds@trlawyers.com

9 Michael E. Sullivan, Esq.
10 Nevada Bar No. 5142
11 ROBISON, BELAUSTEGUI, SHARP & LOW
12 71 Washington Street
13 Reno, NV 89503
14 Telephone: (775) 329-3151
15 Facsimile: (775) 329-7941
16 E-mail: msullivan@rbsllaw.com

17 **Attorneys for Defendant, MTC FINANCIAL INC. dba TRUSTEE CORPS**
18 (erroneously sued as MTC FINANCIAL, INC. dba TRUSTEE CORPS)

19
20 UNITED STATES DISTRICT COURT
21
22 STATE OF NEVADA

23
24
25
26
27
28

JEFFREY BENKO, a Nevada resident; CAMILO MARTINEZ, a Nevada resident; ANA MARTINEZ, a Nevada resident; FRANK SCINTA, a Nevada resident; JACQUELINE SCINTA, a Nevada resident; SUSAN HJORTH, a Nevada resident; RAYMOND SANSOTA, a Ohio resident; FRANCINE SANSOTA, a Ohio resident; SANDRA KUHN, a Nevada resident; JESUS GOMEZ, a Nevada resident; SILVIA GOMEZ, a Nevada resident; DONNA HERRERA, a Nevada resident; ANTOINETTE GILL, a Nevada resident; JESSE HENNIGAN, a Nevada resident; KIM MOORE, a Nevada resident; THOMAS MOORE, a Nevada resident;	CASE NO. _____ (Clark County Case No. A-11-649857-C) PETITION FOR REMOVAL BY DEFENDANT MTC FINANCIAL INC. dba TRUSTEE CORPS
Plaintiff,	{
vs.	{
QUALITY LOAN SERVICE CORPORATION, a California Corporation; APPELTON PROPERTIES, LLC, a Nevada Limited Liability Company; MTC FINANCIAL, INC. dba TRUSTEE CORPS, a California Corporation; MERIDIAN FORECLOSURE SERVICE, a California	}

1 and Nevada Corporation dba MTDS, Inc.,)
 2 dba MERIDIAN TRUST DEED SERVICE;)
 3 NATIONAL DEFAULT SERVICING)
 4 CORPORATION, a Arizona Corporation;)
 5 CALIFORNIA RECONVEYANCE)
 6 COMPANY, a California Corporation; and)
 7 DOES 1 through 100, inclusive,)
 8 Defendants.)
 9
 10
 11
 12
 13

Defendant MTC FINANCIAL INC. dba TRUSTEE CORPS (erroneously sued as MTC FINANCIAL, INC. dba TRUSTEE CORPS) ("TRUSTEE CORPS") submits this Petition for Removal of the above-captioned lawsuit entitled JEFFREY BENKO vs. QUALITY LOAN SERVICE CORPORATION, etc., et al., as Case No. A-11-649857-C, originally assigned to Dept. VIII then reassigned to Dept. XXXII, in the District Court located in Clark County, Nevada ("State Court") to this Court pursuant to 28 U.S.C. §§ 1331, 1332(d)(2), 1332(d)(5)(B), 1441, 1446, and 1453(a).

COMPLIANCE WITH PROCEDURAL REQUIREMENTS

1. TRUSTEE CORPS was served with a copy of Plaintiffs' State Court first
 2 amended complaint ("FAC") on or about January 24, 2012. It was never served with the
 3 original complaint. Thus, this removal is timely because the 30-day period for filing the
 4 removal has not passed. 28 U.S.C. §1446(b). Additionally, removal is timely because it is
 5 filed within one year from when Plaintiffs started the State Court action on October 12, 2011.

2. Pursuant to 28 U.S.C. §1446(a), TRUSTEE CORPS has attached a true and
 3 correct copy of the original complaint and FAC as **Exhibits "A and B, respectively."**
 4 Attached as **Exhibit "C"** is a true and correct copy of Plaintiffs' Notice of Pendency of Action
 5 filed October 13, 2011, which copy TRUSTEE CORPS obtained from the State Court.

3. TRUSTEE CORPS has provided and served a copy of the Petition for Removal
 4 on Plaintiffs and will timely file a copy of the Petition for Removal with the Clerk of the State
 5 Court as required by 28 U.S.C. §1446(d).

4. TRUSTEE CORPS is informed and believes and hereon alleges that no other
 5 Defendant has appeared to date.

1 5. Removal from State Court to this Court is proper as this district embraces the
2 place where the action is pending 28 U.S.C. §1441(a).

BACKGROUND

4 6. Plaintiffs have asserted in their FAC class action claims for consumer fraud,
5 unjust enrichment, and trespass against all defendants, a class action claim for elder abuse
6 against Meridian Foreclosure Service (“Meridian”), and a sham and misjoined claim of quiet
7 title against by Antoinette Gill against Appleton Properties.

FEDERAL QUESTION

9 7. Plaintiffs make a charge in the first count of alleged violation of N.R.S.
10 598.0923(1) [“A person engages in a ‘deceptive practice’ when... he or she knowingly: 1.
11 Conducts the business or occupation without all required state, county or city licences.”]. This
12 claim is based on purported violations of N.R.S. 649.075 and 649.171 [“debt collector license
13 required”]. The term “debt collection” (and violation thereof) in turn depends on how the term
14 is defined in Nevada pursuant to N.R.S. 649.370. In this regard, the latter statute refers
15 exclusively and coextensively to 15 U.S.C. §§1682, 1692 et seq. (Federal Fair Debt Collection
16 Practices Act) (“FDCPA”) for the definition of debt collection (and the violation thereof). Thus,
17 federal question jurisdiction exists because resolution of the state claim necessarily requires or
18 turns on the construction of the above federal law with respect to the definition of “debt
19 collection.” See, Smith v. Community Lending, Inc., 773 F.Supp.2d 941,945,946 (D.Nev.
20 2011); Chase v. United Residential Mortgage, LLC, 2011 WL 198008 (D.Nev.)*1-3.

**MINIMUM DIVERSITY OF CITIZENSHIP PURSUANT TO
CLASS ACTION FAIRNESS ACT (“CAFA”)**

23 8. There are at least 100 class members in the proposed Plaintiffs' classes. 28 USC
24 §1332(d)(5)(B). Indeed, Plaintiffs claim the class is composed of thousands of Nevada
25 residents (FAC, ¶23).

26 9. The combined claims of all class members allegedly exceeds \$5 million exclusive
27 of interest and costs. 28 USC §1332(d)(2)(6). If at a minimum the class purportedly consisting
28 of “thousands of Nevada residents” allegedly totals least 1,000 residents and each purportedly

1 suffered the amount pleaded of in excess of \$10,000 (Complaint, ¶¶34, 42, and 60), the
 2 combined claims of the class are alleged to be \$10 million at a minimum.

3 10. Any class member (named or not) is a citizen of a different state than any
 4 defendant. 28 USC §1332(d)(2)(A).

- 5 A. TRUSTEE CORPS is a California Corporation, whose corporate status is
 6 active in Nevada, and whose principal place of business is Irvine,
 7 California.
- 8 B. TRUSTEE CORPS is informed and believes that Defendant Quality Loan
 9 Service Corporation is a California Corporation with its principal place of
 10 business in San Diego, California.
- 11 C. TRUSTEE CORPS is informed and believes that Defendant National
 12 Default Servicing Corporation is an Arizona Corporation with its principal
 13 place of business in Phoenix, Arizona.
- 14 D. TRUSTEE CORPS is informed and believes that Defendant California
 15 Reconveyance Company is a California Corporation with its principal
 16 place of business in Chatsworth, California.
- 17 E. TRUSTEE CORPS is informed and believes that Defendant Meridian
 18 Foreclosure Service is a California Corporation with its principal place of
 19 business in Las Vegas, Nevada
- 20 F. It is alleged the class is made up of Nevada residents and certain named
 21 Plaintiffs, Raymond Sansota and Francine Sansota, now reside in Ohio as
 22 of the filing of the original complaint. There are no Defendants who are
 23 citizens of Ohio.

24 Therefore, class members are citizens of a different state than any defendant. Thus, diversity
 25 is pleaded pursuant to CAFA.

26 11. The naming of Defendant Appleton Properties as a defendant and Plaintiff
 27 Antoinette Gill's third claim for quiet title constitute a sham. Firstly, the claim appears to
 28 incorporate alleged facts in support for which federal question jurisdiction exists— specifically,

1 resolution of the quiet title claim appears to turn on the construction of the definition of “debt
 2 collection” under FDCPA. No independent factual basis is pleaded for the claim.

3 In Nevada, a quiet title action may be brought “by any person against another who claims
 4 an ... interest in real property, adverse to the person bringing the action, for the purpose of
 5 determining such adverse claim.” N.R.S. 40.010; Lasao v. Stearns Lending Co., 2011 WL
 6 3273923 at *8-9 (D.Nev.). A quiet title action is an equitable proceeding for the adjudication
 7 of *disputed* ownership of real property rights. *See, Howell v. Ricci*, 197 P.3d 1044, n. 1 (Nev.
 8 2008). Here, *the property went to sale*, and foreclosure trustees, which are the defendants in
 9 this case, *have no interest or ownership in the subject real property*. Thus, the quiet title claim
 10 constitutes a fraudulent misjoinder because it has no connection to the alleged class action
 11 claims made against the foreclosure trustees. None of the foreclosure trustees named has any
 12 liability under this claim.

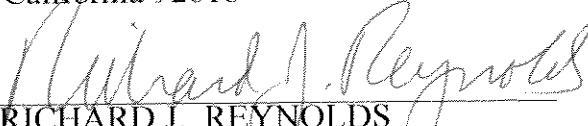
13 The claim does not plead Plaintiff Antionette Gill tendered what was owed on the claim.
 14 Because quiet title is an action in equity, it is widely accepted that the party seeking to remove
 15 a claim to his or her title must tender any undisputed amounts owed in order to challenge the
 16 validity of a sale. Lasao v. Stearns Lending Co., *supra*, 2011 WL 3273923 at *8; Reyna v.
 17 Wells Fargo Bank, N.A., 2011 WL 2690087 at *2 (D.Nev.); Provenzano v. Clark County, 73
 18 Nev. 348, 353, 319 P.2d 855 (1957) (allowing action to quiet title where Plaintiff also tendered
 19 all amounts due). The amount to be tendered would go to the lender, but the lender, a necessary
 20 and essential party, is not named to quiet title claim. The above necessary requirements to quiet

21 ///
 22 ///
 23 ///
 24 ///
 25 ///
 26 ///
 27 ///
 28 ///

1 title are not pleaded. Thus, the quiet title claim is a sham claim not intended to be prosecuted
2 but is asserted to attempt to destroy diversity under CAFA.

3 DATED this 13th day of February, 2012.

4
5 **TURNER, REYNOLDS, GRECO & O'HARA**
6 16485 Laguna Canyon Road, Suite 250
7 Irvine, California 92618

8 By: 

9 RICHARD J. REYNOLDS
10 Attorneys for Defendant, MTC
11 FINANCIAL INC. dba TRUSTEE CORPS

12 MICHAEL SULLIVAN
13 **ROBISON, BELAUSTEGUI, SHARP & LOW**
14 71 Washington Street
15 Reno, NV 89503

16 Attorneys for Defendant, MTC
17 FINANCIAL INC. dba TRUSTEE CORPS

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of TURNER, REYNOLDS, GRECO & O'HARA, and that on February 14, 2012, I caused to be served a true copy of the **PETITION FOR REMOVAL BY DEFENDANT MTC FINANCIAL INC. dba TRUSTEE CORPS** on all parties to this action by the method(s) indicated below:

by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Irvine, California, addressed to:

Nicholas A. Boylan, Esq.
LAW OFFICES OF NICHOLAS A. BOYLAN, APC
450 A Street, Suite 400
San Diego, CA 92101
Email: nablawfirm@gmail.com
Attorneys for Plaintiffs

GERI K. TOOLEY